

**DEPARTMENT OF SOCIAL SERVICES**

744 P Street, Sacramento, CA 95814



December 31, 2004

Regulation Package #0902-23

CDSS MANUAL LETTER NO. CCL-04-16

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22, DIVISION 12,  
CHAPTER 1, CHILD CARE CENTERS

**Regulation Package #0902-23****Effective 8/20/04****Sections 101152, 101170, 101170.1, 101195, 101216, and 101217**

This manual letter has been posted on the Office of Regulations Development website at [http://www.dss.cahwnet.gov/ord/ChildCareC\\_626.htm](http://www.dss.cahwnet.gov/ord/ChildCareC_626.htm).

As a result of testimony received from the public hearing and at the Department's discretion, post-hearing changes have been made to the regulations readopted on March 11, 2004. Those changes include that regardless of a pardon, expungement, or sealing of an individual's record by a court, the individual signing a LIC 508 must declare whether he/she has been convicted of a crime. The definition of "rehabilitation" is clarified to include "the effort to establish good character since the date of the last conviction." Also clarified is that individuals, except for certified foster parents, may request a criminal record exemption on their own behalf. Furthermore, Section 101170(d)(2)(B) is repealed since it deals with a specific facility type, not Child Care Centers. Finally, minor grammatical and nonsubstantive corrections have also been made.

These regulations were considered at the Department's public hearing held on September 17, 2003.

**FILING INSTRUCTIONS**

**Revisions to all manuals are indicated by a vertical line in the left margin.** The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-04-15. The latest prior manual letter containing Child Care Centers regulation changes was Manual Letter No. CCL-04-08.

**Page(s)**

1 and 2  
5 through 13.1  
32 and 33  
36 through 39.4  
61 and 62  
89 and 90  
101 through 102.2

**Replace(s)**

Pages 1 and 2  
Pages 5 through 13  
Pages 32 and 33  
Pages 36 through 39.4  
Pages 61 and 62  
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Attachments

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## **CHAPTER 1 - CHILD CARE CENTER GENERAL LICENSING REQUIREMENTS**

### **Article 1. GENERAL REQUIREMENTS AND DEFINITIONS**

#### **101151      GENERAL      101151**

- (a) The general regulations in this chapter shall apply to all child care centers regulated by Division 12, except where specifically exempted. Additional or special requirements found in the corresponding subchapters pertaining to each category shall apply only to such individual child care center categories.
- (b) The licensee shall ensure compliance with all applicable laws and regulations.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73 and 1596.81, Health and Safety Code.

#### **101152      DEFINITIONS      101152**

The following general definitions shall apply wherever the terms are used throughout Division 12, Chapter 1, except where specifically noted otherwise. Any additional definitions found at the beginning of any subchapter in this chapter shall apply only to such specific child care center category.

- | (a)
  - (1) "Administrator" means the licensee, or the adult designated by the licensee to act in his/her behalf in the overall management of the facility.
  - (2) "Adult" means a person who is 18 years of age or older.
  - (3) "Applicant" means any adult, general partner(s) of a partnership, corporation, county, city, public agency or other governmental entity that has applied for a child care center license.
  - (4) "Assistant Infant Care Center Director" ("Assistant Director") means the individual as specified in Section 101415.1 designated by the child care center director to act in his or her behalf in the overall management of an infant care center.
  - (5) "Authorized Representative" means any person or entity authorized by law to act on behalf of any child. Such person or entity may include but not be limited to a minor's parent, a legal guardian, a conservator or a public placement agency.

<b>101152</b>	<b>DEFINITIONS (Continued)</b>	<b>101152</b>
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- (b) (1) "Basic Services" means those services required by applicable laws and regulations to be provided by the licensee in order to obtain and maintain a child care center license.
- (c) (1) "California Clearance" means an individual has no felony or misdemeanor convictions reported by the California Department of Justice. However, the individual may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.
- (2) "Capacity" means the maximum number of children authorized to be provided care and supervision at any one time in any licensed child care center.
- (3) "Care and Supervision" means any one or more of the following activities provided by a person or child care center to meet the needs of children in care:
- (A) Assistance in diapering, toileting, dressing, grooming, bathing and other personal hygiene.
  - (B) Assistance with taking medications as specified in Sections 101226(e)(3) and (e)(4).
  - (C) Storing and/or distribution of medications as specified in Section 101226(e).
  - (D) Arrangement of and assistance with medical and dental care.
  - (E) Maintenance of rules for the protection of children.
  - (F) Supervision of children's schedules and activities for the protection of children.
  - (G) Monitoring food intake or special diets.
  - (H) Providing basic services as defined in Section 101152b.(1).
- (4) "Child" means a person under 18 years of age who is being provided care and supervision in a child care center, except where specified otherwise.
- (5) "Child Abuse Central Index" means the California Department of Justice maintained statewide, multi-jurisdictional, centralized index of child abuse investigation reports. These reports pertain to alleged incidents of physical abuse, sexual abuse, mental/emotional abuse and/or severe neglect. Each child protection agency (police, sheriff, county welfare and probation departments) is required by law to forward to the California Department of Justice a report of every child abuse incident it investigates, unless an incident is determined to be unfounded.

<b>101152</b>	<b>DEFINITIONS (Continued)</b>	<b>101152</b>
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- (6) "Child Abuse Central Index Clearance" means that the California Department of Justice has conducted a name search of the index and the search did not result in a match or the search resulted in a match but the California Department of Social Services determined after an investigation that the allegation of child abuse or neglect was not substantiated.
- (7) "Child Care Center" or "Day Care Center" (or "center") means any child care facility of any capacity, other than a family child care home as defined in Section 102352f.(1), in which less than 24-hour per day nonmedical care and supervision are provided to children in a group setting. The term "Child Care Center" supersedes the term "Day Care Center" as used in previous regulations.
- (8) "Child Care Center Director" or "Day Care Center Director" means the administrator of a child care center. The term "Child Care Center Director" supersedes the term "Day Care Center Director" as used in previous regulations.
  - (A) The term "head teacher" is an acceptable substitute for the term "child care center director" provided that the head teacher meets the qualifications of a child care center director and there is written delegation of responsibilities as specified in Section 101215.1(c)(1).
- (9) "Child Care Facility" or "Child Day Care Facility" (or "facility") means any place or building in which less than 24-hour per day nonmedical care and supervision, as defined in Section 101152c.(2), are provided to children in a group setting. The term "Child Care Facility" supersedes the term "Child Day Care Facility" as used in previous regulations.

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- (A) Health and Safety Code Section 1596.750 states:

"Child day care facility" means a facility which provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facility includes day care centers and family day care homes.

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- (10) "Combination Center" means any combination of child care center, infant center, school-age child care center, and child care center for mildly ill children that is owned and operated by one licensee at a common address.

<b>101152</b>	<b>DEFINITIONS (Continued)</b>	<b>101152</b>
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(11) "Completed Application" means:

- (A) The applicant has submitted and the Department has received all required materials including: an approved fire clearance, if appropriate, from the State Fire Marshal; and a criminal record clearance on the applicant and any other individuals specified in Section 101170.
- (B) The Department has completed a site visit to the child care center.

(12) "Control of Property" means the right to enter, occupy and maintain the operation of the child care center property within regulatory requirements. Evidence of control of property may include, but is not limited to, the following:

- (A) a Grant Deed showing ownership; or
- (B) the lease agreement or rental agreement; or
- (C) a court order or similar document that shows the authority to control the property pending outcome of a probate proceeding or an estate settlement.

(13) "Conviction" means:

- (A) A criminal conviction in California; or
- (B) Any criminal conviction of another state, federal, military or other jurisdiction, which if committed or attempted in California, would have been punishable as a crime in California.

(14) "Criminal Record Clearance" means an individual has a California Department of Justice clearance and an FBI clearance.

(d) (1) "Deficiency" means any failure to comply with any provision of the California Child Day Care Act (Health and Safety Code, Section 1596.70 et seq.) and/or regulations adopted by the Department pursuant to the Act.

(2) "Department" means the California Department of Social Services (CDSS) or any state, county or other public agency authorized by CDSS to assume specified licensing responsibilities pursuant to Health and Safety Code Sections 1596.77 and 1596.82. The term "Department" supersedes the term "Licensing Agency" as used in previous regulations.



<b>101152</b>	<b>DEFINITIONS (Continued)</b>	<b>101152</b>
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- (3) "Developmental Disability" means a disability as defined in Welfare and Institutions Code Section 4512(a).

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- (A) Welfare and Institutions Code Section 4512(a) provides in part: "Developmental disability" means a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely and constitutes a substantial handicap for such individual.

This term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

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- (4) "Director" means the director of the California Department of Social Services.
- (e) (1) "Emergency Approval to Operate" (EAO) (LIC 9117 [4/93]) means a temporary approval to operate a facility for no more than 60 days pending the Department's decision on whether to approve or deny a provisional license.
- (2) "Emergency Substitute," as described in Section 101216.3(h)(1), means a person at least 18 years of age.
- (3) "Evaluator" means any person who is a duly authorized officer, employee or agent of the Department, including any officer, employee or agent of a county or other public agency authorized by the Department to license child care centers.
- (4) "Evidence of Licensee's Death" shall include, but is not limited to, a copy of the death certificate, obituary notice, certification of death from the decedent's mortuary or a letter from the attending physician or coroner's office verifying the licensee's death.
- (5) "Exception" means a written authorization issued by the Department to use alternative means which meet the intent of a specific regulation and that are based on the unique needs or circumstances of a specific child or staff person. Exceptions are not transferable or applicable to other children, staff persons, child care centers or licensees.

<b>101152</b>	<b>DEFINITIONS (Continued)</b>	<b>101152</b>
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- (6) "Exemption" means an exception to the requirements of Health and Safety Code Section 1596.871 and applicable regulations. Exemptions are not transferable.

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- (A) Health and Safety Code Section 1596.871(c)(5) reads in part:

Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

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- (7) "Existing Child Care Center" means any child care center operating under a valid, unexpired license on the date this chapter becomes effective.
- (f) (1) "Federal Bureau of Investigation (FBI) Clearance" means an individual has no felony or misdemeanor convictions reported by the FBI. The individual may also have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.
- (g) (1) "Guardian" means any person appointed by the Superior Court, or court of competent jurisdiction, to care for the person, or estate, or the person and estate of another, as the legal guardian pursuant to law.
- (h) (Reserved)
- (i) (1) "Infant" means a child under two years of age.
- (2) "Infant Care Center" means any child care center or part of a child care center of any capacity where less than 24-hour per day nonmedical care and supervision are provided to infants in a group setting.
- (3) "Infant Care Center Director" means the administrator of an infant care center as specified in Section 101415.
- (4) "Infant Care Teacher" means a teacher as specified in Section 101416.2.

<b>101152</b>	<b>DEFINITIONS (Continued)</b>	<b>101152</b>
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- (j) (Reserved)
- (k) (Reserved)
- (l) (1) "License" means a written authorization by the Department to operate a child care center and to provide care and supervision. A license is not transferable.
- (2) "Licensee" means the adult, general partner(s) of a partnership, controlling partners in a limited liability corporation, corporation, county, city, public agency or other governmental entity having the authority and responsibility to operate a licensed child care center.
- (3) "Licensing Agency" - See "Department" as specified in Section 101152d.(2). The term "Department" supersedes the term "Licensing Agency" as used in previous regulations.
- (m) (1) "Medical Professional" means an individual who is licensed or certified in California to perform the necessary medical procedures within his/her scope of practice. This includes, but is not limited to, Medical Doctor (MD), Registered Nurse (RN) and Licensed Vocational Nurse (LVN).
- (2) "Mental Disorder" means any of the disorders set forth in the Diagnostic and Statistical Manual of Mental Disorders (Third Edition), published by the American Psychiatric Association, and a degree of functional impairment that renders a person eligible for the services enumerated under the Lanterman-Petris-Short Act (commencing with Section 5000 of the Welfare and Institutions Code).
- (n) (1) "Nonambulatory Person" is defined in Health and Safety Code Section 13131.
- (A) A person who uses supportive restraints as specified in Section 101223.1 is deemed nonambulatory.
- (B) A person is not deemed nonambulatory solely because he/she is deaf, blind, or prefers to use a mechanical aid.

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- (C) Health and Safety Code Section 13131 provides:

"Nonambulatory persons" means persons unable to leave a building unassisted under emergency conditions. It includes any person who is unable, or likely to be unable, to physically and mentally respond to a sensory signal approved by the State Fire Marshal, or an oral instruction relating to fire danger, and persons who depend upon mechanical aids such as crutches, walkers, and wheelchairs. The determination of ambulatory or nonambulatory status of persons with developmental disabilities shall be made by the Director of Social Services or his or her designated representative, in consultation with the Director of Developmental Services or his or her designated representative. The determination of ambulatory or nonambulatory status of all other disabled persons placed after January 1, 1984, who are not developmentally disabled shall be made by the Director of Social Services or his or her designated representative.

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- (o) (Reserved)
- (p) (1) "Physician" means a person licensed as a physician and surgeon by the Medical Board of California or the Osteopathic Medical Board of California.
- (2) "Preschool-age Child" means a child as defined in Health and Safety Code Section 1597.059.

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Health and Safety Code Section 1597.059 states:

- (A) ... "preschool age children" means children who are enrolled in a child day care center licensed by the department and who are not enrolled in either an infant care center or a schoolage child day care center, as these terms are defined in Title 22 of the California Code of Regulations.

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- (3) "Provide" or "Provision" means to make available any service or personnel to meet licensing or other requirements.

<b>101152</b>	<b>DEFINITIONS (Continued)</b>	<b>101152</b>
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- (4) "Provisional License" means a temporary license issued in accordance with the criteria specified in Section 101181.
- (q) (1) "Qualified Teacher Substitute" means a person at least 18 years of age with at least six postsecondary semester or equivalent quarter units in early childhood education or child development.
- (r) (1) "Rehabilitation" means the effort to reestablish good character since the date of the last conviction, including, but not limited to, education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service.
- (2) "Relative" means spouse, parent, stepparent, son, daughter, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, nephew, niece, first cousin or any such person denoted by the prefix "grand" or "great," or the spouse of any of the persons specified in this definition even after the marriage has been terminated by death or dissolution.
- (s) (1) "School-Age Child" means any child who meets one of the following:
- (A) Has entered the first grade or above;
- (B) Is in a child care program providing care and supervision exclusively to children enrolled in kindergarten and above.
- (2) "School-Age Child Care Center" means any child care center or part of a child care center of any capacity where less than 24-hour per day nonmedical care and supervision are provided to school-age children in a group setting.
- (3) "Serious Deficiency" means any deficiency that presents an immediate or substantial threat to the physical health, mental health or safety of the children in a child care center.

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- (A) See Section 101193(a)(1).

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<b>101152</b>	<b>DEFINITIONS (Continued)</b>	<b>101152</b>
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- (4) "Simplified Exemption" means an exemption granted on the Department's own motion, as authorized in Health and Safety Code Section 1596.871(c)(3), if the individual's criminal history meets specific criteria established by Department regulation.
- (5) "Substantial Compliance" means the absence of any serious deficiencies.
- (t) (1) "Toddler Component" means the component of a preschool or infant care program designed for children between the ages of 18 months and 30 months.
- (u) (1) "Urgent Need" means a situation where prohibiting the operation of the child care center would be detrimental to a child's physical health, mental health, safety or welfare. Circumstances constituting urgent need include but are not limited to:
  - (A) A change in the location of the child care center when children are in need of services from the same operator at the new location.
  - (B) A change of ownership of the child care center when children are in need of services from a new operation.
- (v) (Reserved)
- (w) (1) "Waiver" means a nontransferable written authorization issued by the Department to use alternative means which meet the intent of a specific regulation and that are based on a facility-wide need or circumstance.
- (x) (Reserved)
- (y) (Reserved)
- (z) (Reserved)

NOTE: Authority cited: Sections 1596.81 and 1596.858(e), Health and Safety Code. Reference: Sections 1502, 1596.72, 1596.73, 1596.74, 1596.75, 1596.750, 1596.76, 1596.77, 1596.770, 1596.78, 1596.79, 1596.790, 1596.791, 1596.81, 1596.858(e), 1596.955 and 1596.956, Health and Safety Code.

<b>101170</b>	<b>CRIMINAL RECORD CLEARANCE (Continued)</b>	<b>101170</b>
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- (c) Prior to the Department issuing a license, the applicant and the administrator shall obtain a California criminal record clearance or exemption.

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- (1) Section 1596.871(a)(5) of the Health and Safety Code states in part:

An applicant and any person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Health and Safety Code Section 1596.885. The department may also suspend the license pending an administrative hearing pursuant to Health and Safety Code Section 1596.886.

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- (d) All individuals subject to criminal record review shall, be fingerprinted and sign a Criminal Record Statement (LIC 508 [Rev. 1/03]) under penalty of perjury.

- (1) A person signing the LIC 508 must:

(A) Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 101170(k) regardless of whether the individual was granted a pardon for the conviction, received an expungement pursuant to Penal Code 1203.4 or the individual's record was sealed as a result of a court order.

(B) If convicted of a crime other than a minor traffic violation as specified in Section 101170(k), provide information regarding the conviction.

- (2) The licensee shall submit these fingerprints to the California Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or comply with Section 101170(e)(1), prior to the individual's employment or initial presence in the child care facility.

<b>101170</b>	<b>CRIMINAL RECORD CLEARANCE (Continued)</b>	<b>101170</b>
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- (A) Fingerprints shall be submitted to the California Department of Justice by the licensee or sent by electronic transmission to the California Department of Justice by a fingerprinting entity approved by the California Department of Social Services.
- (e) All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1596.871 shall prior to working, residing or volunteering in a licensed facility:
- (1) Obtain a California clearance or a criminal record exemption as required by the Department or
- (2) Request a transfer of a criminal record clearance as specified in Section 101170(f) or
- (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 101170.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.
- (f) A licensee or applicant for a license may request a transfer of a criminal record clearance from one state licensed facility to another, or from TrustLine to a state licensed facility by providing the following documents to the Department:
- (1) A signed Criminal Background Clearance Transfer Request, LIC 9182 (Rev. 4/02).
- (2) A copy of the individual's driver's license, or
- (3) A valid identification card issued by Department of Motor Vehicles, or
- (4) A valid photo identification issued by another state or the United States government if the individual is not a California resident.
- (5) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).



**HANDBOOK CONTINUES**

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- (3) Section 243.4 of the Penal Code provides in part:
- (A) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.
  - (B) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.
- (4) Section 273a of the Penal Code provides:
- (A) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for 2, 4 or 6 years.
  - (B) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.
- (5) Section 273d of the Penal Code provides:
- (A) Any person who willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 4 or 6 years, or in the county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both.

**HANDBOOK CONTINUES**

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CHILD CARE CENTER GENERAL LICENSING REQUIREMENTS		
101170 (Cont.)		Regulations
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HANDBOOK CONTINUES		

(6) Section 368 of the Penal Code provides:

- (A) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.
- (B) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health may be endangered, is guilty of a misdemeanor.

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**HANDBOOK ENDS HERE**

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- | (m) The Department may seek verification from a law enforcement agency or court of an individual's criminal record as reported to the Department from any member of the public or affected individual.
- | (1) Upon obtaining confirmation from a law enforcement agency or court of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.
- | (n) (Reserved)

<b>101170</b>	<b>CRIMINAL RECORD CLEARANCE (Continued)</b>	<b>101170</b>
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- (o) If the Department determines that any licensee or individual specified in Health and Safety Code Section 1596.871(b) is arrested for a crime for which, if convicted, an individual is not eligible, by law, to receive an exemption, pending completion of its investigation into the facts underlying the arrest, the Department may take the following actions:
- (1) If the arrested individual is a licensee, the Department may notify the licensee, by telephone or in writing, to immediately cease operation for up to 30 days.
  - (2) If the individual arrested is not a licensee, the Department may notify the licensee and the individual associated with the facility, by telephone or in writing, that the individual may not be present in the facility for up to 30 days.
- (p) After the Department notifies the licensee, pursuant to Section 101170(o)(1), or the individual pursuant to Section 101170(o)(2), he or she may present a written appeal that:
- (1) he or she is not the individual who was arrested,
  - (2) he or she has not been arrested for a crime that by law an individual is not eligible to receive an exemption, or
  - (3) he or she was arrested for a crime that by law an individual is not eligible to receive an exemption but the charges have been dropped or reduced to a crime that by law an individual would be eligible to receive an exemption.
- The appeal shall contain the licensee's or individual's current address and telephone number. After the Department receives the appeal and any supporting documentation, it shall review the appeal and notify the licensee or individual of its decision within five (5) working days.
- (q) Should the Department determine at any time during the 30 days referred to in Sections 101170(o)(1) and (o)(2) that the criminal charges have been dropped or reduced to a charge for a crime that by law an individual would be eligible to receive an exemption, the Department shall immediately rescind the notice.
- (r) Nothing in this section shall be interpreted to supercede the Department's authority under Sections 1596.886 and 1596.8897 of the Health and Safety Code.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b) and 1596.871, Health and Safety Code.

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<b>101170.1 CRIMINAL RECORD EXEMPTION</b>	<b>101170.1</b>
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- (a) The Department will notify a licensee to act immediately to terminate the employment of, remove from the facility or bar from entering the facility any person described in Sections 101170.1(a)(1) through (5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice.
- (1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;
  - (2) Any person who has been convicted of a felony;
  - (3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1596.871(c)(2);
  - (4) Any person who has been convicted of any crime specified below:
    - (A) Battery
    - (B) Shooting at Inhabited Dwelling
    - (C) Corporal Injury on Spouse/Cohabitant
    - (D) Discharging Firearm with Gross Negligence
    - (E) Exhibiting Weapon/Firearm
    - (F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death
    - (G) Criminal Threat to Harm or Injure Another Person
    - (H) Cruelty to Animals
    - (I) Willful Harm or Injury to Child; or
  - (5) Any other person ordered to be removed by the Department.
- (b) In addition to the requirements of Section 101170.1(a), the licensee must return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility.
- (1) Confirmation must be made on either a Removal Confirmation – Exemption Needed, LIC 300A (Rev. 9/03), Removal Confirmation - Denial, LIC 300B (Rev. 9/03), Removal Confirmation - Rescinded, LIC 300C (Rev. 9/03), or Removal Confirmation - Nonexemptible, LIC 300D (Rev. 9/03).

<b>101170.1 CRIMINAL RECORD EXEMPTION (Continued)</b>	<b>101170.1</b>
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(c) After a review of the criminal record transcript, the Department may grant an exemption if:

- (1) The applicant/licensee requests an exemption for himself or herself, or
- (2) The applicant/licensee requests an exemption in writing for an individual associated with the facility, or
- (3) The applicant/licensee chooses not to seek an exemption on the affected individual's behalf, the affected individual requests an individual exemption in writing, and
- (4) The affected individual presents substantial and convincing evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued or maintaining a license, employment or residence in a licensed facility.

(d) To request a criminal record exemption, a licensee or license applicant must submit information that indicates that the individual meets the requirements of Section 101170.1(c)(4). The Department will send a written notice to the licensee or license applicant that lists the information that must be submitted to request a criminal record exemption. The information must be submitted within forty-five (45) days of the date of the Department's notice.

- (1) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing any information requested by the Department, including, but not limited to, police reports and certified court documents to process the exemption request, pursuant to Section 101170.1(e).
- (2) If the individual for whom the criminal record exemption is requested is an employee or resident other than a spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice, the Department may cease processing the exemption request and close the case.
- (3) If the individual for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice, the Department may deny the exemption request.
- (4) Individuals may request a criminal record exemption on their own behalf if the licensee or license applicant:
  - (A) Chooses not to request the exemption and

**101170.1 CRIMINAL RECORD EXEMPTION (Continued)****101170.1**

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|  | <ul style="list-style-type: none"><li>(B) Terminates the individual's employment because of the individual's criminal history, or</li><li>(C) Removes the individual who resides in the facility because of the individual's criminal history.</li></ul> |
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- (e) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:
- (1) The nature of the crime including, but not limited to, whether it involved violence or a threat of violence to others.
  - (2) Period of time since the crime was committed and number of offenses.
  - (3) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.
  - (4) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.
  - (5) A full and unconditional pardon granted by the Governor.
  - (6) Character references.
    - (A) All character references shall be on a Reference Request form (LIC 301E – Exemptions [Rev. 7/03]).
  - (7) A certificate of rehabilitation from a superior court.
  - (8) Evidence of honesty and truthfulness as revealed in exemption application documents.
    - (A) Documents include, but are not limited to:
      - 1. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. 1/03]) and
      - 2. The individual's written statement/explanation of the conviction and the circumstances about the arrest.

<b>101170.1 CRIMINAL RECORD EXEMPTION (Continued)</b>	<b>101170.1</b>
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- (9) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department.
- (f) The Department shall also consider the following factors in evaluating a request for an exemption:
  - (1) Facility and type of association.
  - (2) The individual's age at the time the crime was committed.
- (g) The Department may deny the individual's exemption request if:
  - (1) The individual fails to provide documents requested by the Department, or
  - (2) The individual fails to cooperate with the Department in the exemption process.
- (h) The reasons for any exemption granted or denied shall be in writing and shall be kept by the Department.
- (i) The Department has the authority to grant a criminal record exemption that places conditions on the individual's continued licensure, and employment or presence in a licensed facility.
- (j) It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an exemption if the individual:
  - (1) Makes a knowingly false or misleading statement regarding:
    - (A) Material relevant to their application for a criminal record clearance or exemption,
    - (B) His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or
    - (C) His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or
  - (2) Is on probation or parole.
    - (A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding Section 101170.1(j)(2).



**101170.1 CRIMINAL RECORD EXEMPTION (Continued)****101170.1**

- (k) The Department shall consider granting a criminal record exemption for an individual when the individual's criminal record history meets all of the applicable criteria specified in Sections 101170.1(k)(1) through (6) and the individual provides the Department with substantial and convincing evidence of good character as specified in Section 101170.1(c)(4). For purposes of this section, a violent crime is a crime that, upon evaluation of the code section violated and/or the reports regarding the underlying offense, presents a risk of harm or violence.
- (1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.
  - (2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
  - (3) The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
  - (4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
  - (5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
  - (6) The individual has not been convicted of a violent felony.
  - (7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in Section 101170.1(k)(1) through (5) above shall begin from the last date of conviction(s).
- (l) It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of an exemption if the individual fails to meet the requirements specified in Sections 101170.1(k)(1) through (6).
- (m) The Department shall not grant an exemption if the individual has a conviction for any offense specified in Section 1596.871(f) of the Health and Safety Code.

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Health and Safety Code Section 1596.871(f) provides that no exemption shall be granted if an individual has been convicted of any of the following offenses:

- (1) Penal Code Sections 136.1 and 186.22 – Gang related/Intimidation of witnesses or victims.
- (2) Penal Code Sections 187, 190 through 190.4 and 192(a) – Any murder/Attempted murder/Voluntary manslaughter.
- (3) Penal Code Section 203 – Any mayhem.
- (4) Penal Code Section 206 - Felony torture.
- (5) Penal Code Sections 207, 208, 209, 209.5, 210 – Kidnapping.
- (6) Penal Code Sections 211, 212.5, 213, 214 – Any robbery.
- (7) Penal Code Section 215 – Carjacking.
- (8) Penal Code Section 220 – Assault with intent to commit mayhem, rape, sodomy or oral copulation.
- (9) Penal Code Section 243.4 – Sexual battery.
- (10) Penal Code Section 261(a), (a)(1), (2), (3), (4) or (6) – Rape.
- (11) Penal Code Section 262(a)(1) or (4) – Rape of a spouse.
- (12) Penal Code Section 264.1 – Rape in concert.
- (13) Penal Code Section 266 – Enticing a minor into prostitution.
- (14) Penal Code Section 266c – Induce to sexual intercourse, etc. by fear or consent through fraud.
- (15) Penal Code Section 266h(b) – Pimping a minor.
- (16) Penal Code Section 266i(b) – Pandering a minor.

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**HANDBOOK CONTINUES**

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<b>101170.1 CRIMINAL RECORD EXEMPTION (Continued)</b>	<b>101170.1</b>
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- (17) Penal Code Section 266j – Providing a minor under 16 for lewd or lascivious act.
- (18) Penal Code Section 267 – Abduction for prostitution.
- (19) Penal Code Section 269 – Aggravated assault of a child.
- (20) Penal Code Section 272 – Contributing to the delinquency of a minor (must involve lewd or lascivious conduct).
- (21) Penal Code Sections 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] – Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.
- (22) Penal Code Section 273d – Willfully inflicting any cruel or inhuman corporal punishment or injury on a child.
- (23) Penal Code Section 285 – Incest.
- (24) Penal Code Section 286 – Sodomy.
- (25) Penal Code Section 288 – Lewd or lascivious act upon a child under 14.
- (26) Penal Code Section 288a – Oral copulation.
- (27) Penal Code Section 288.2 – Felony conviction for distributing lewd material to children.
- (28) Penal Code Section 288.5(a) – Continuous sexual abuse of a child.
- (29) Penal Code Section 289 – Genital or anal penetration or abuse by any foreign or unknown object.
- (30) Penal Code Section 290(a) – All crimes for which one must register as a sex offender including attempts and not guilty by insanity.
- (31) Penal Code Section 311.2(b), (c) or (d) – Transporting or distributing child-related pornography.
- (32) Penal Code Section 311.3 – Sexual exploitation of a child.

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**HANDBOOK CONTINUES**

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- (33) Penal Code Section 311.4 – Using a minor to assist in making or distributing child pornography.
- (34) Penal Code Section 311.10 – Advertising or distributing child pornography.
- (35) Penal Code Section 311.11 – Possessing child pornography.
- (36) Penal Code Sections 314 paragraphs 1 or 2 – Lewd or obscene exposure of private parts.
- (37) Penal Code Section 347(a) – Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, reservoir or public water supply.
- (38) Penal Code Section 368 – Elder or dependent adult abuse.
- (39) Penal Code Section 417(b) – Drawing, exhibiting or using a loaded firearm.
- (40) Penal Code Section 451(a) or (b) – Arson.
- (41) Penal Code Section 460(a) – First degree burglary if it is charged and proved that a non-accomplice was present in the residence during the burglary.
- (42) Penal Code Sections 186.22 and 518 – Gang related/Extortion.
- (43) Penal Code Section 647.6 or prior to 1988 former Section 647a – Annoy or molest a child under 18.
- (44) Penal Code Section 653f(c) – Solicit another to commit rape, sodomy, etc.
- (45) Penal Code Sections 664/187 – Any attempted murder.
- (46) Penal Code Section 667.5(c)(7) – Any felony punishable by death or imprisonment in the state prison for life.
- (47) Penal Code Section 667.5(c)(8) – Enhancement for any felony which inflicts great bodily injury.
- (48) Penal Code Section 667.5(c)(13) – Enhancement for violation of Penal Code Section 12308, 12309 or 12310 – Exploding or igniting or attempting to explode or ignite any destructive device or explosive with intent to commit murder.
- (49) Penal Code Section 667.5(c)(14) - Any kidnapping – Penal Code Sections 207, 208, 209, 209.5 and 210.

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**HANDBOOK CONTINUES**

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**101170.1 CRIMINAL RECORD EXEMPTION (Continued)****101170.1**

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**HANDBOOK CONTINUES**

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- (50) Penal Code Section 667.5(c)(22) - Any violation of Penal Code Section 12022.53 – Enhancement for listed felonies where use of a firearm.
- (51) Penal Code Section 667.5(c)(23) – Use of weapon of mass destruction.
- (52) Business and Professions Code Section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

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**HANDBOOK ENDS HERE**

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- (n) The Department shall consider granting a simplified criminal record exemption if the individual has the criminal history profile outlined in Sections 101170.1(n)(1) through (4) below:
  - (1) The individual does not have a demonstrated pattern of criminal activity;
  - (2) The individual has no more than one conviction;
  - (3) The conviction is a misdemeanor and is a crime that is nonviolent and does not pose a risk of harm to an individual; and
  - (4) It has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation.
- (o) At the Department’s discretion, an individual who is otherwise eligible for a simplified exemption may be required to go through the standard exemption process if the Department determines such action will help to protect the health and safety of clients.
- (p) If the Department denies or cannot grant a criminal record exemption the Department shall:
  - (1) For initial applicants, deny the application.
  - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
  - (3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.

<b>101170.1 CRIMINAL RECORD EXEMPTION (Continued)</b>	<b>101170.1</b>
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- (4) For individuals residing in the facility, including spouses of the applicant or the licensee, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.
- (q) If a request for an exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no exemption may be granted pursuant to Section 101170.1(m). If a request for an exemption has been denied based on a conviction of a crime for which no exemption may be granted, the individual shall be excluded for the remainder of the individual's life.
  - (1) If the Department determines during the review of an exemption request, that the individual was denied an exemption for a conviction of a crime for which an exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on an exemption denial, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code Section 11522 that was denied, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department denying the petition.
  - (2) An exclusion order based solely upon a denied exemption shall remain in effect and the individual shall not be employed in or present in a licensed facility or certified home, unless either a petition or an exemption is granted.
  - (3) If an individual who has previously been denied an exemption re-applies after the relevant time period described in Section 101170.1(q)(1) above, the Department may, according to the provisions in Section 101170.1 et seq., grant or deny the subsequent request for an exemption.
  - (4) If an individual submits a petition pursuant to Government Code Section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to work or be present in a facility, along with all information required of an individual requesting a criminal record exemption as provided in Section 101170.1. If it is determined, based upon information provided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.

**101170.1 CRIMINAL RECORD EXEMPTION (Continued)****101170.1**

- (r) A licensee or applicant for a license may request a transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department:
- (1) A signed Criminal Record Exemption Transfer Request, LIC 9188 (Rev. 9/03).
  - (2) A copy of the individual's:
    - (A) Driver's license, or
    - (B) Valid identification card issued by the Department of Motor Vehicles, or
    - (C) Valid photo identification issued by another state or the United States Government if the individual is not a California resident.
  - (3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).
- (s) The Department may consider factors including, but not limited to, the following in determining whether or not to approve the transfer of an exemption from one facility to another:
- (1) The basis on which the Department granted the exemption;
  - (2) The nature and frequency of client contact in the new position;
  - (3) The category of facility where the individual wishes to transfer;
  - (4) The type of clients in the facility where the individual wishes to transfer;
  - (5) Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations; or
  - (6) Whether the exemption meets current exemption laws or regulations.
- (t) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.

<b>101170.1 CRIMINAL RECORD EXEMPTION (Continued)</b>	<b>101170.1</b>
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- (u) At the Department's discretion, an exemption may be rescinded if it is determined that:
- (1) The exemption was granted in error or
  - (2) The exemption does not meet current exemption laws or regulations or
  - (3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.
- (v) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct which is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:
- (1) Violations of licensing laws or regulations;
  - (2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;
  - (3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or
  - (4) The individual is convicted of a subsequent crime.
- (w) If the Department rescinds an exemption the Department shall:
- (1) Notify the licensee and the affected individual in writing; and
  - (2) Initiate an administrative action.
- (x) If the Department learns that an individual has been convicted of a crime after obtaining a criminal record clearance or exemption, the Department, at its sole discretion, may initiate an administrative action to protect the health and safety of clients.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b), 1596.871, 1596.885, and 1596.8897, Health and Safety Code.



<b>101193</b>	<b>DEFICIENCIES IN COMPLIANCE</b>	<b>101193</b>
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(Continued)

(C) If the date for correcting the deficiency is more than 30 calendar days following service of the notice of deficiency, the notice shall specify the corrective actions that must be taken within 30 calendar days to begin correction.

(D) If civil penalties are assessed, the evaluator shall require correction of the deficiency within 24 hours and shall specify on the notice of deficiency the date by which the correction must be made.

(5) The amount of the civil penalty assessed and the date the penalty begins.

(6) The address and telephone number of the Department's office responsible for reviewing notices of deficiencies for the area in which the child care center is located.

NOTE: Authority cited: Sections 1596.81 and 1596.99, Health and Safety Code. Reference: Sections 1596.81(b), 1596.98 and 1596.99, Health and Safety Code.

<b>101194</b>	<b>FOLLOW-UP VISITS TO DETERMINE COMPLIANCE</b>	<b>101194</b>
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(a) A follow-up visit shall be conducted to determine compliance with the plan of correction specified in the notice of deficiency.

(1) A follow-up visit shall be conducted within 10 working days following the date(s) of correction specified in the notice of deficiency unless the licensee has demonstrated that the deficiency was corrected as required.

(2) No penalty shall be assessed unless a follow-up visit is conducted.

(b) If a follow-up visit indicates that a deficiency was not corrected on or before the date specified in the notice of deficiency, the evaluator shall issue a notice of penalty.

(c) A notice of penalty shall be in writing and shall include:

(1) The amount of the penalty assessed and the date the payment is due.

(2) The name and address of the agency responsible for collecting of the penalty.

(d) When an immediate penalty has been assessed pursuant to Sections 101195(c), (d) and (e), and correction is made when the evaluator is present, a follow-up visit is not required.

NOTE: Authority cited: Sections 1596.81 and 1596.99, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1596.852, 1596.853, 1596.98 and 1596.99, Health and Safety Code.

<b>101195</b>	<b>PENALTIES</b>	<b>101195</b>
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- (a) A penalty of \$50 per day, per cited violation, shall be assessed for serious deficiencies that are not corrected by the date specified in the notice of deficiency, up to a maximum of \$150 per day.
- (b) Notwithstanding Section 101195(a) above, an immediate penalty of \$100 per cited violation shall be assessed if any individual required to be fingerprinted under Health and Safety Code Section 1596.871(b) has not obtained a California clearance or criminal record exemption, requested a transfer of a criminal record clearance or requested and be approved for a transfer of an exemption as specified in Section 101170(e) prior to the individual's employment, residence or initial presence in the facility.
  - (1) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1596.871.
  - (2) Progressive civil penalties specified in Sections 101195(d) and (e) below shall not apply.
- (c) Notwithstanding (a) above, an immediate penalty of \$150 per day shall be assessed if a child becomes sick, is injured or dies as a result of a deficiency.
- (d) When a child care center is cited for a deficiency and violates the same regulation subsection within a 12-month period, the child care center shall be cited and an immediate penalty of \$150 per cited violation shall be assessed for one day only. Thereafter, a penalty of \$50 per day, per cited violation, shall be assessed until the deficiency is corrected.
- (e) When a child care center that was cited for a deficiency subject to the immediate penalty assessment specified in Section 101195(d) above violates the same regulation subsection within a 12-month period of the last violation, the child care center shall be cited and an immediate penalty of \$150 per cited violation shall be assessed for one day only. Thereafter, a penalty of \$150 per day, per cited violation, shall be assessed until the deficiency is corrected.
  - (1) For purposes of Sections 101195(d) and (e) above, a regulation subsection is the regulation denoted by a lower-case letter after the main regulation number.

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An example of the same regulation subsection are Sections 101216.1(d)(1) and 101216(d)(3).  
Sections 101216.1(b) and 101216.1(d) are not the same regulation subsection.

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**HANDBOOK ENDS HERE**

<b>101216</b>	<b>PERSONNEL REQUIREMENTS</b>	<b>101216</b>
	(Continued)	

- (6) Availability of community services and resources.
- (f) At least one staff member who is trained in pediatric cardiopulmonary resuscitation and pediatric first aid pursuant to Health and Safety Code Section 1596.866 shall be present when children are at the child care center or offsite for center activities.
- (g) All personnel, including the licensee, administrator and volunteers, shall be in good health and shall be physically and mentally capable of performing assigned tasks.
  - (1) Except as specified in (3) below, good physical health shall be verified by a health screening, including a test for tuberculosis, performed by or under the supervision of a physician not more than one year prior to or seven days after employment or licensure.
  - (2) Each person specified in (g) above shall have a health-screening report signed by the person performing the screening. This report shall indicate the following:
    - (A) The person's physical qualifications to perform the duties to be assigned.
    - (B) The presence of any health condition that would create a hazard to the person, children or other staff members.
  - (3) The good physical health of each volunteer who works in the center shall be verified by:
    - (A) A statement signed by each volunteer affirming that he/she is in good health.
    - (B) Results of a test for tuberculosis performed not more than one year prior to or seven days after initial presence in the center.
- (h) Personnel that pose a threat to the health and safety of children shall be relieved of their duties.
- (i) Prior to employment or initial presence in the child care center, all employees and volunteers subject to a criminal record review shall:
  - (1) Obtain a California clearance or a criminal record exemption as required by law or Department regulations or

<b>101216</b>	<b>PERSONNEL REQUIREMENTS</b>	<b>101216</b>
	(Continued)	

- (2) Request a transfer of a criminal record clearance as specified in Section 101170(f) or
- (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 101170.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.
- (j) Personnel shall provide for the care and safety of children without physical or verbal abuse, exploitation or prejudice.
- (k) The licensee or designated individual shall instruct all personnel to report observations or evidence of violations of any of the personal rights specified in Section 101223.
- (l) All personnel shall be informed of their rights pursuant to Sections 1596.881 and 1596.882 of the Health and Safety Code.

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**HANDBOOK BEGINS HERE**

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Health and Safety Code Section 1596.881 provides in part:

Employees shall be notified in writing at the time of employment of their rights under this chapter, as evidenced by their signature on a notification form outlining actions protected by this section. Forms to be utilized for this purpose shall be kept on file at the facility. The Department shall provide each facility with the notification forms, which shall include information regarding enforcement pursuant to relevant Labor Code sections.

Health and Safety Code Section 1596.882 provides in part:

A claim by the employee alleging the violation by the employer of Section 1596.881 shall be presented to the employer within 45 days after the action as to which complaint is made and presented to the Division of Labor Standards Enforcement not later than 90 days after the action as to which complaint is made.

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<b>101217</b>	<b>PERSONNEL RECORDS</b>	<b>101217</b>
	(Continued)	

(10) A signed and dated copy of a Notice of Employee Rights (LIC 9052 [11/94]).

(11) A health screening as specified in Section 101216(g).

(12) Tuberculosis test documents as specified in Section 101216(g).

(13) A signed statement regarding their criminal record history as required by Section 101170(d).

(14) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 101170(e).

(b) Personnel records shall be maintained for all volunteers and shall contain the following:

(1) A health statement as specified in Section 101216(g).

(2) Tuberculosis test documents as specified in Section 101216(g)(3).

(3) For volunteers that are required to be fingerprinted pursuant to Section 101170:

(A) A signed statement regarding their criminal record history as required by Section 101170(d).

(B) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 101170(e).

(c) All personnel records shall be kept for at least three years following termination of employment.

(d) All personnel records shall be maintained at the child care center and shall be available to the licensing agency for review.

(1) The licensee may keep such records in a central administrative location provided that they are readily available to the Department at the child care center site upon request.

(e) In all cases, personnel records shall document the hours actually worked.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1596.880, 1596.881 and 1596.882, Health and Safety Code.

<b>101218</b>	<b>ADMISSION POLICIES</b>	<b>101218</b>
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- (a) Every child care center shall have all admission policies in writing and available to the public. The policies shall coincide with the limitations stated on the license, and shall include, but not be limited to, the following:
- (1) Written admission criteria designating those children whose needs can be met by the center's program and services.
  - (2) The ages of children who will be accepted.
  - (3) The program activities.
  - (4) The supplementary services provided, if any.
  - (5) Field-trip provisions, if any.
  - (6) Transportation arrangements, if any.
  - (7) Food-service provisions.
  - (8) Medical-assessment requirement.
- (b) A licensee who provides care to a child with disabilities shall be able to meet the individual needs of the child.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81 and 1597.05, Health and Safety Code.

<b>101218.1</b>	<b>ADMISSION PROCEDURES AND PARENTAL AND AUTHORIZED REPRESENTATIVE'S RIGHTS</b>	<b>101218.1</b>
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- (a) In accordance with the child care center's individual program, policies and needs, the licensee shall develop, implement and maintain an admission procedure that enables the person in charge of admissions to:
- (1) Determine that the child meets the child care center's admission criteria.
  - (2) Conduct one or more personal interviews with the child's parent or authorized representative that meets the following requirements:

<b>101218.1</b>	<b>ADMISSION PROCEDURES AND PARENTAL AND AUTHORIZED REPRESENTATIVE'S RIGHTS (Continued)</b>	<b>101218.1</b>
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- (A) Enables the person responsible for admissions to understand the state of the child's health and physical and emotional development, and to assess whether the child care center can meet the child's needs.
- (B) Provides the child's parent or authorized representative with information about the child care center that shall at least include the child care center's admission policies and procedures, activities, services, regulations, hours and days of operation, fees, procedures to be followed should the child become ill or injured while at the child care center, and procedures for conducting inspections for illness.
- (3) Obtain all identifying information specified in Section 101221(b).
- (4) Obtain all health information specified in Section 101220.
- (b) At the time of acceptance of each child in care, the licensee shall inform each child's parent or authorized representative of his/her rights that include, but are not limited to, the following:
  - (1) To enter and inspect the child care center in accordance with Health and Safety Code Section 1596.857.
  - (2) To file a complaint against the licensee with the local licensing office in accordance with Health and Safety Code Section 1596.853.
  - (3) To review the child care center's public file kept by the local licensing office in accordance with Health and Safety Code Section 1596.859.
  - (4) To review at the child care center, reports of licensing visits and substantiated complaints against the licensee made during the last three years in accordance with Health and Safety Code Section 1596.859.
  - (5) To complain to the local licensing office and inspect the child care center without discrimination or retaliation in accordance with Health and Safety Code Section 1596.857.
  - (6) To request in writing that a parent not be allowed to visit a child or take a child from the child care center provided the custodial parent has shown a certified copy of a court order pursuant to Health and Safety Code Section 1596.857.

101218.1 (Cont.)	CHILD CARE CENTER GENERAL LICENSING REQUIREMENTS	Regulations
<b>101218.1</b>	<b>ADMISSION PROCEDURES AND PARENTAL AND AUTHORIZED REPRESENTATIVE'S RIGHTS</b> (Continued)	<b>101218.1</b>
	<ul style="list-style-type: none"> <li>(7) To receive from the licensee upon request the name, address and telephone number of the local licensing office in accordance with Health and Safety Code Section 1596.874.</li> <li>(8) To be informed by the licensee, upon request, of the name and type of association to the child care center for any adult who has been granted a criminal record exemption, and that the name of the person may also be obtained by contacting the local licensing office.</li> <li>(c) The licensee shall post the PUB 393 (8/02), Child Care Center Notification of Parents' Rights Poster in a prominent, publicly accessible area in the child care center at all times.</li> <li>(d) The licensee shall provide to the parent or authorized representative the LIC 995E (8/02), Caregiver Background Check Process form.</li> </ul>	